

REMARKS

In the Office Action mailed March 26, 2007, the Examiner initially indicated the allowance of claims 20-38. The Examiner objected to claims 11-15 and 47-49 as being dependent upon a rejected base claim but indicated these claims were allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The applicant hereby acknowledges and appreciates such finding by the Examiner.

By the present response, dependent claim 11 has been rewritten into independent form to include the subject matter of independent claim 1. Likewise, dependent claim 47 has been rewritten into independent form including the subject matter of original independent claim 39. Based upon these amendments, claim 11-15 and 47-49 are now in condition for allowance based upon the finding by the Examiner.

In the Office Action, the Examiner rejected claims 1-10, 16-19, 39-46, 50 and 51 under 35 USC §102(b) as being anticipated by the Richardson U.S. Patent No. 3,884,219. Reconsideration of such rejection is hereby requested in view of the foregoing claim amendments, as well as in view of the arguments for allowance set forth below.

Independent Claim 1

By the present response, independent claim 1 has been amended to more specifically indicate that the respiration sensing element is positioned on the disposable cover such that the respiration sensing element is removable from the probe along with the removal of the disposable cover. As set forth in paragraph [0029] of the specification, the respiration sensing element is positioned on the disposable covers such that both the respiration sensing element and the disposable cover can be disposed of to provide single-patient-use to prevent cross-contamination between patients while electronically monitoring and/or recording temperature and respiration rates.

In the Richardson '219 reference cited by the Examiner, the reference teaches a system that includes a probe 30, 70 that includes both a first transducer 45, 85 and a second transducer 48, 90 that are both formed as an integral part of the probe. In both of

the embodiments shown in the '219 reference, the second transducer 48, 90 is stationarily mounted within the probe and a disposable probe cover can be slid over the probe and aligned with the second transducer.

In accordance with the system of the '219 reference, after the temperature and respiration rate has been determined for the patient, the probe cover 52 can be removed and the probe, including both the first and second transducers, can be used with another patient by attaching another probe cover. However, the same second transducer 48, 90 is utilized with the next patient.

As can be understood in the drawing Figures of the '219 reference, when a patient is utilizing the system taught by the '219 reference, breath, mucus and other bodily fluids can come into contact with the second transducer 48, 90 through the aperture 60 formed in the disk 58. Thus, before the probe can be used with the next patient, the second transducer 48, 90 must be cleaned/sterilized to prevent cross-contamination between the patients. This requirement is both costly and labor intensive.

As required by amended independent claim 1, the respiration sensing element is positioned on the disposable cover such that the respiration sensing element is removable from the probe along with the disposable cover. In this manner, both the disposable cover and the respiration sensing element combine as a single-patient-use device.

This feature of amended independent claim 1 is not taught or suggested, nor rendered obvious by the Richardson '219 reference cited by the Examiner. For this reason, amended independent claim 1 is believed to be allowable over the Richardson '219 reference.

Dependent claim 2-10, 16-19 depend directly or indirectly from claim 1 and are believed to be allowable based upon the above arguments for allowance of claim 1 as well as in view of the subject matter of each of the claims.

Specifically, claim 16 requires the respiration sensing element to be a separate element from the temperature sensing element such that the respiration sensing element can be moved independently of the temperature sensing element with respect to at least

one of the patient's nose and mouth. As described above, the respiration sensing element is positioned on the disposable cover such that the disposable cover and the respiration sensing element can be moved separate from the probe that includes the temperature sensing element. As described above, the Richardson '219 reference does not teach or suggest, nor render obvious, this limitation required by claim 16.

Independent Claim 39

By the present response, independent claim 39 has been amended to generally incorporate the subject matter of dependent claim 40. Further, independent claim 39 has been amended to more specifically indicate that the respiration sensing element is positioned on the disposable cover such that both the disposable cover and the attached respiration sensing element can be removed from the probe and disposed of to prevent cross-contamination between patients. As discussed above in the arguments for allowance of independent claim 1, the Richardson '219 reference teaches that both the temperature sensing element and the respiration sensing element are both formed as part of the probe. The disposable cover 52 taught by the Richardson '219 reference is positioned over both the temperature sensing element and the respiration sensing element. Thus, when utilizing the system taught by the Richardson '219 reference, the respiration sensing element must be cleaned and sanitized before the probe is used with another patient to prevent cross-contamination. Thus, the Richardson '219 reference does not teach or suggest, nor render obvious, the subject matter of amended independent claim 39. For this reason, amended independent claim 39 is believed to be allowable.

Claims 41-46 and 50-51 depend directly or indirectly from amended independent claim 39 and are thus believed to be allowable based upon the above arguments for allowance as well as in view of the subject matter of each of the claims

Conclusion

Based upon the above claim amendments and arguments for allowance, previously rejected claims 1-10, 16-19, 39, 41-46 and 50-51 are believed to be allowable over the Richardson U.S. Patent No. 3,884,219 reference cited by the Examiner. Allowable claims

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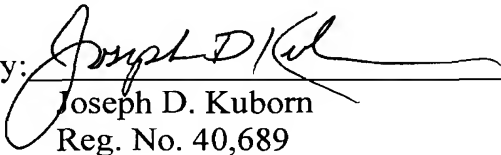
11 and 47 have been rewritten into independent form such that claims 11-15 and 47-49 are in condition for allowance. Claims 20-38 were previously allowed by the Examiner.

Following the amendment, claims 1-39, 41-51 are believed to be in condition for allowance, and such action is respectfully requested.

The Examiner is invited to contact the applicant's undersigned attorney with any questions or comments, or to otherwise facilitate prosecution of the present application.

Respectfully submitted,

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